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AUG 4 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 299

RUTHBELL COAL COMPANY, A CORPORATION,
Petitioner,

vs.

CLARA W. STANTON, ADMINISTRATRIX OF THE ESTATE OF ERNEST L. STANTON, DECEASED,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA AND BRIEF IN SUPPORT THEREOF.

F. E. PARRACK,
Counsel for Petitioner.

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Argument

(1) The Court has not decided the exact questions here presented, and it is of nation wide importance... 4

(2) The basic question was not the "ownership" of the mine, but was the control, management and operation... 5

(3) The seizure of the mine was within the power of the Government... 5

(4) That the Government took over the mine is an admitted fact... 5

(5) The Supreme Court of Appeals of West Virginia erroneously held:

That because the Company still "owned" the mine; that the sole purpose of its seizure was to maintain production for the prosecution of the War; that the Secretary was permitted to use existing personnel in operations; that the "regulations" stated the manager and employees should "serve the Company"; that the Company remained subject to State and Federal law, preserved company liability under federal control and operation... 5

It further erroneously concluded that federal control was only nominal... 5

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(6) The control was not "nominal"; the Government took over all property and every facility of the Company; its control was complete 6
(7) Stanton was killed while federal control was in force 6
(8) All "regulations" were by the Secretary, not by the Company 6
(9) The notice required to be posted recited that Operating Manager and employees were serving the Government 6
(10) Whether the Company was still subject to suit, and for what, was a judicial question 6
(11) This Court's opinion in *Telegraph Company* v. *Poston* is conclusive of issues here involved 7

Cases Cited

Telegraph Company v. *Poston*, 256 U. S. 262 11
Telephone & Telegraph Company v. *Spring* 12
Telephone Company v. *South Dakota*, 250 U. S. 163 13

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To the Honorable, the Supreme Court of the United States:

The petition of Ruthbell Coal Company, a Corporation, petitioner, respectfully shows unto this Honorable Court:

Petitioner seeks certiorari to the Supreme Court of Appeals of West Virginia to review a judgment of said Court entered May 29, 1945, affirming a judgment of $6,500.00, with interest and costs, rendered by the Circuit Court of Preston County, West Virginia, rendered April 24, 1944, against petitioner, and in favor of respondent. A certified copy of the printed record in said Supreme Court of Appeals, and of its opinion in the case are filed with this petition, and pages referred to are to that record.

Summary Statement of Matters Involved

I

Petitioner, a coal mining corporation, owned and operated on May 1, 1943, a bituminous coal mine in Preston County, West Virginia.

II

On May 1, 1943, the President of the United States of America issued an Executive Order authorizing and directing the Secretary of the Interior, who was Solid Fuels Administrator of the United States, to take possession of all coal mines where strikes or stoppage of work had occurred or were threatened (R. 140-142).

The direction was, so far as necessary to take over all "real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation," and to operate or "arrange for the operation of such mines * * * and do all things necessary for or incidental to the production, sale and distribution of coal."

He was authorized to "act through or with the aid of such public or private instrumentalities or persons as he may designate," and "permit the management to continue its managerial functions to the maximum degree consistent with the aims of this order."

He was directed to make employment available to persons seeking employment, so far as they were needed, and the Secretary of War, upon request of the Secretary of the Interior, was directed to furnish protection to the mines, and to the persons employed.

It was made the duty of the Secretary of the Interior to maintain customary conditions, and to recognize the right of collective bargaining.

III

On May 1, 1943, by authority of such Executive Order, the Secretary of the Interior took possession of practically all, if not all mines producing bituminous coal, including petitioner's mine, said mines being listed in what was called "Appendix A."

That a general order, designated "Order No. 1809," was issued by the Secretary of the Interior on May 1, 1943, taking over all mines specified in "Appendix A," petitioner's mine being therein specified, by which was taken "any and all real and personal property, franchises, rights, facilities, funds and other assets, * * * for operation by the United States in furtherance with the prosecution of the War."

The president was made "Operating Manager for the United States," and authorized and directed, "under the supervision of the Secretary," to "operate such mine, and to do all things necessary and appropriate" for its operation and the distribution and sale of the product.

It provided, "All officers and employees of the Company are serving the Government of the United States," and directed them to perform their usual functions "with full regard for their obligations to the Government of the United States." It directed the "Operating Manager for the United States to fly the flag on the premises, and to post in a conspicuous place the notice of the taking over of the mine by the Secretary, and to furnish such notice to all those in possession of Company funds" (R. 151-152).

IV

On May 1, 1943, the Secretary of the Interior, acting as "Solid Fuels Administrator for War," sent to C. W. Craig, president of petitioner, a telegram announcing the taking over of said mine, and calling upon him as a "loyal,

patriotic American," to act as "Operating Manager for the United States, and to continue operations subject to instructions."

He was asked to solemnly promise to "serve the United States," and to fly the flag to show that "Property is being operated exclusively for the United States, and that all employees, including myself, who operate the mines are serving our country." He was to insert the name of the mines after the words "The mines operating for the United States is."

He was directed to, in operating, "use existing managerial set up as far as practicable."

If anything happened requiring military force to maintain order he was to communicate with a "Manager of Field Office of Bituminous Coal Division" for his area (142-144).

V

Pursuant to said Executive Order and said Order 1809 of the Secretary of the Interior, and said telegram and further orders of the Secretary of the Interior and Solid Fuels Administration issued from time to time, said C. W. Craig, as Operating Manager for the United States, continued operation of said mine until September 3, 1943.

There was required to be posted, and was posted in a prominent place on the premises of said Company, a picture of the United States flag, under which were the words "United States Property," and underneath those words the words "The Secretary of the Interior," followed by the words "Order for Taking Possession." Then followed a recital that under the authority of the President of the United States, having found that a strike or a stoppage had occurred, the Secretary of the Interior had taken possession of all the mines named in "Appendix A" (which included the mine of petitioner), of the real and personal

property, franchises, rights, facilities, funds and other assets for the United States in furtherance of the prosecution of War. That the president of the Company was designated Operating Manager for the United States, and directed, *subject to the supervision of said Secretary and in accordance with the regulations,* to operate the mine, and that all officers and employees of the Company were serving the Government of the United States, and should conduct themselves with full regard for their obligations to the Government of the United States (emphasis supplied) (R. 149-150).

That Ernest L. Stanton was, on August 25, 1943, by Peter Titchenell, mine foreman, employed to work, and while so employed was fatally injured on August 27, 1943, by a fall of the roof of the mine.

Respondent, as his administratrix, sued petitioner for causing the death of her decedent, alleging negligence and failure to comply with the Workmen's Compensation Law of West Virginia (R. 9-13).

A trial resulted in a verdict for the plaintiff in said suit by the jury for $6,500.00 (R. 37), and a judgment on said verdict on April 24, 1944, in the circuit court of said Preston County (R. 41-43).

Petitioner took exception to various rulings of the trial court, and having taken appropriate bills of exception, obtained from the Supreme Court of Appeals of West Virginia, on September 11, 1944, a writ of error (R. 8). That court, on May 29, 1945, made the order complained of, affirming the judgment of said circuit court (R. 202).

Petitioner, among other defenses relied upon, claimed that it was not on August 27, 1943, the employer of Ernest L. Stanton, and asserted that from May 1 to September 1943, the Government of the United States was the operator of the mine, and the employer of all persons engaged in mining coal therein. It made this defense by

several pleas (R. 14-18 and 24-32), to which pleas respondent demurred, and the Court sustained demurrer in a written opinion (R. 21-23).

Petitioner upon the trial attempted to prove as a defense the exclusive possession of said mine by the United States (R. 136-153), but the trial court held that the Government's possession and control of the mine was no defense, and rejected such evidence.

After the rendition of the verdict petitioner moved to set the same aside, again relying upon the Government control, and asserting that to allow said judgment to stand would deprive petitioner of property without due process of law. That contention was overruled, and judgment rendered on the verdict (R. 41-43).

VII

Questions Presented

We recognize the finality of the holding of the Supreme Court of Appeals of West Virginia, except as to Federal questions.

As shown, petitioner claimed immunity from suit on account of the Federal control and operation of the mine at, before and after the time of the accident causing the death of plaintiff's decedent, Ernest L. Stanton.

There are presented these questions, which we believe are Federal questions and within the jurisdiction of this Court:

(1) Was petitioner on August 27, 1943, the employer of Ernest L. Stanton, or was Stanton an employee of the United States?

(2) Was the negligence, if any, causing the injury attributable to petitioner?

(3) If petitioner should be compelled to respond in damages for an injury occurring while the mine was being operated by the Government, would that violate his rights under the Fifth Amendment to the Constitution of the United States by taking its property without due process of law?

VIII

Jurisdiction

It is believed that this Court has jurisdiction under its general jurisdiction to protect the Constitutional rights of citizens under Section 237 of the Judicial Code of the United States, and under such part of said section as gives it jurisdiction: "Where any title, right, privilege or immunity is specially set up or claimed under the Constitution."

IX

Reasons for Allowance of the Writ

First: The Supreme Court of Appeals of West Virginia has decided an important question of Federal Law not previously decided by this Court:

(a) This Court has never decided whether, while a coal mine was being operated under Federal control, the mine owner was liable to respond in damages for an injury, fatal or otherwise, suffered by a miner while employed in such mine.

(b) This Court has not decided whether during such control one employed in the mine is a servant of the mine owner or of the United States.

Second: The decision and judgment of the Supreme Court of Appeals of West Virginia in this case is contrary to the applicable decisions of this Court touching Federal

control of industries and the relation of the employees of such industries to the owners thereof.

Third: The affirmance by the Supreme Court of Appeals of West Virginia of the judgment of the trial court in the instant case, if not reviewed, will deprive petitioner of property without due course of law and in violation of the Fifth Amendment to the Constitution of the United States.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Appeals of West Virginia, commanding that said Court certify and send to this Court for its review and determination, on a day to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on the docket No. 9650, styled "Clara W. Stanton, Administratrix of the Estate of Ernest L. Stanton, deceased, Plaintiff Below, Defendant in Error, v. Ruthbell Coal Company, a corporation, Defendant Below, Plaintiff in Error," and that said judgment of said Supreme Court of Appeals of West Virginia may be reversed by this Honorable Court; and that petitioner may have such other and further relief as may seem meet and just.

RUTHBELL COAL COMPANY,
a Corporation,
Petitioner.

F. E. PARRACK,
Counsel for Petitioner.